

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D 5842 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE

Disposed of matter

1. For order on CMA No.5298/2023
2. For order on CMA No.5299/2023

24.02.2023

Mr. Ovais Ali Shah & Mr. Ahmed Hussain Advocates for the petitioners

Dr. Shahnawaz Memon, advocate for respondent

Ms. Fozia Muhammad Murad advocate for respondent

1. Urgent application is granted.
2. Through this application the Commissioner, Inland Revenue, Large Tax Payer's Officer (LTO) seeks discharge of sureties in favor of the department furnished before the Nazir of this Court pursuant to ad-interim orders passed by this Court. Learned counsel for Respondent places reliance on order dated 16.02.2023 passed by the Hon'ble Supreme Court in ***C.P.3825 and 3909 of 2022, 126-K to 131-K, 167-K to 193-K of 2023 (Federation of Pakistan through Chairman Federal Board of Revenue, Islamabad vs. Shell Pakistan Limited Karachi & others***, and requests that in view of the above order, the sureties furnished in matters decided by a common judgment be discharged in favor of the Department accordingly.

Heard and perused the record. It appears that the tax-payers had challenged the provisions of Section 4C of the Income Tax Ordinance, 2001, through which Super Tax was levied vide Finance Act, 2022, and by way of ad-interim orders passed on various dates in all petitions respectively, the amount of Super Tax as may be payable was secured before the Nazir of this Court. Thereafter all such petitions were clubbed and were decided together vide a common short order dated 22.12.2022 followed by reasons / judgment dated 13.01.2023, whereby, the petitions were though allowed on certain terms; however, the said order / judgment was suspended for a period of 60 days. The said judgment was impugned in the above case and the Hon'ble Supreme Court has passed an order on 16.02.2023 which reads as under: -

"Learned counsels for the petitioner have pointed out that the Tax Year 2022 for which the impugned Super Tax under Section 4C of the Income Tax Ordinance, 2001 ("**Ordinance**") has been imposed starts from 01.07.2021 until 30.06.2022. In the present case, the respondents being high earning taxpayers with incomes greater or equal to Rs.300 million claim that they do not fall within the purview of Super Tax for two reasons. Firstly, because their accounting year ended on 31.12.2021 prior to the close of Tax Year 2022 on 30.06.2022. Therefore, the impugned Super Tax was being demanded by the petitioner with retrospective effect. We are not persuaded by the arguments at this stage because according to the learned counsel for the petitioner, the accounting year of the respondents ends during the course of Tax Year 2022 to which the provisions of Section 4C are lawfully applicable.

2. Pursuant to the second reason, it is held by the impugned judgment that the Super Tax is discriminatory. The rates of Super Tax under Section 4C *ibid* are specified in Division II B, Part I of the First Schedule to the Ordinance. However, the First Proviso to the Division II B charges income earners of more than Rs.300 million falling within the category of certain specified industries to a higher rate of tax at 10%. Otherwise the rate of tax is 4% for such earners in other industries or businesses. The learned High Court has found in favour of the respondents on that score on the ground of discrimination. The learned counsel for the petitioner submits that the said argument cannot form the basis of altogether striking down the impugned Super Tax because implicitly the respondents' argument accepts liability to taxation at the rate of 4%. However, he is not able to explain to us the justification for charging super tax at a higher rate for industries specified in the first proviso. We grant him time to prepare his case on that point.

3. Issue notice to the respondents in all petitions. The learned counsels for the respondents who are represented before the Court accept notice.

4. Insofar as the interim relief is concerned, the as respondents which are liable to pay Super Tax at the rate of 10% under the proviso shall deposit the same within one week at the rate of 4% which is applicable to assessee industries earning income exceeding Rs.300 million provided in Division II B *ibid* but falling outside the proviso thereto. In the event that the respondents have furnished bank guarantees on the direction of the High Court then the same shall be en-cashed by the petitioner to the extent of 4% tax. Relist in the week commencing 13th March, 2023"

From perusal of the aforesaid order, it appears that insofar as the tax-payers who do not fall within the first proviso to Division II-B of Part-I of the First Schedule (i.e. who are liable to pay 10% super tax) are concerned, have to pay and discharge their liability of Super Tax in full to be calculated as per table thereof (between 1% to 4%). To this, Mr. Ovais Ali Shah, who has affected appearance for some of the petitioners submits that it is not so; rather the order is only applicable to those persons who fall within the proviso, being liable to 10% Super Tax and not the rest. He has also argued that the order of the Hon'ble Supreme Court is an interim order and not an order in rem, whereas, Para 1 of the order is not applicable to any of the cases as the judgment of this Court was not based on the grounds so recorded in the order. However, with respect, we do not agree as apparently all such tax-payers case has been discussed in the first Para as above, and they are required to pay Super Tax in full. Whereas, the tax-payers who fall within the Proviso *ibid*, and were

required to pay 10% Super Tax, are for the present purposes required to discharge their liability to the extent of 4%. Further this has to be done in respect of all tax-payers by way of encashment of securities in favor of the department to the extent of 4%. As to the same being an interim order, we may observe that matters were decided by way of a common judgment in the leading petition bearing CP No.5842 of 2022, whereas, the judgment was suspended and in the interregnum, department has approached the Hon'ble Supreme Court and to the extent of securities (all sorts) lying with the Nazir of this Court, it stands modified; hence, these objections are overruled.

In view of the above facts and circumstances, this application is allowed by directing the Nazir of this Court to discharge all sureties furnished in the petitions as listed in the schedule to our order / judgment dated 22.12.2022 passed in CP D-5842 of 2022 and all connected matters to the extent of 1% to 4%, as the case may be, pertaining to Super Tax in favor of the respective respondents in all these petitions immediately. The concerned Commissioners / Respondents shall approach Nazir's office for assistance and compliance. The application stands allowed / disposed of in the above terms.

J U D G E

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Amjad/PA